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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re A.M., a Person Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

A.M.,

Defendant and Appellant.

E065421

(Super.Ct.No. RIJ1400325)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni,  
Judge. Affirmed.

Katherine A. Clark, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman and Julie  
Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

Appellant A.M. (mother) appeals from a Welfare and Institutions Code<sup>1</sup> section 366.26 order terminating parental rights to her son, A.M. (the child). On appeal, mother contends that: (1) the court erred in denying her section 388 petition; and (2) the beneficial parental relationship exception (§ 366.26, subd. (c)(1)(B)(i)) applied. We affirm.

### FACTUAL AND PROCEDURAL BACKGROUND

On March 21, 2014, the Riverside County Department of Public Social Services (DPSS) filed a section 300 petition on behalf of the child, who was seven months old at the time. Mother was only 16 years old when the child was born. The petition alleged that the child came within the provisions of section 300, subdivision (b) (failure to protect). The petition included the allegation that mother was unable to provide the child with adequate food, clothing, shelter, medical treatment, and protection, due to her unstable mental health issues. It also alleged that she and the child's father (father)<sup>2</sup> engaged in domestic violence and that there was an active restraining order against him.

The social worker filed a detention report stating that DPSS received a referral on March 13, 2014, when mother checked herself in at Riverside Operation SafeHouse, claiming that her parents kicked her out of their home. Mother was placed in protective custody due to her unwillingness to return home and her parents stating that they could

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<sup>1</sup> All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

<sup>2</sup> Father is not a party to this appeal.

no longer take care of her due to her mental health and behavioral problems. The social worker interviewed mother, who said that she left the child with the paternal grandmother. However, she said the child was in danger there because father had access to him. Mother requested the social worker to place her and the child in foster care. However, she wanted him to go into a separate foster home until she was ready for him to be placed with her. Mother said she had been prescribed several medications since the age of 12. She went off her medication when she was pregnant and when she decided to breastfeed the child. Mother said she was not currently taking the medication as prescribed. She said she needed help because she was overwhelmed and could not deal with the responsibility of raising the child without support or a stable place to live.

The social worker interviewed father, as well. He lived with his mother, who was currently taking care of the child. Father said he had a restraining order that prohibited his physical contact with mother. He said that he could not be left alone with the child and that his mother or sister had to supervise him. Father said that mother had been moving the child to and from different homes since he was born. She was given custody of the child because of their domestic violence relationship.

The court held a detention hearing on March 24, 2014, and detained the child in foster care.

#### *Jurisdiction/disposition*

The social worker filed a jurisdiction/disposition report on April 10, 2014. The social worker reported that mother was not able to care for the child without help. She

had not had stable mental health treatment since becoming pregnant, and she had decompensated. She was constantly changing her mind about providing suitable housing and consistent care for the child.

The social worker interviewed mother on April 7, 2014, in her foster placement. Mother said she wanted to have more freedom and hang out with her friends. She asked when the child would be able to live with her, but was informed that DPSS wanted to see her stabilize on her medication, show her ability to follow rules, and not run away. Mother reported that when she was 12 years old, she tried to commit suicide by hanging herself. She could not remember or explain why she wanted to commit suicide. Mother said she was diagnosed with bipolar disorder. She would have racing thoughts, make poor decisions when she was in a manic state, and then would get depressed. Mother said her psychiatrist was Dr. Kotomori, and she saw him once a week. She just recently started taking her medication as prescribed. The social worker said DPSS was hesitant to place the child in the same foster home with mother. She had a history of leaving her family home when she lived with her parents, and she had not been on a regular medication regimen for long. DPSS recently received information that mother had plans to kill the child, and it was unknown if she continued to experience suicidal or homicidal ideations.

The social worker further reported that mother was scheduled to have visitation once a week for one hour. She was observed at two of the visits to be attentive to the child. The social worker also reported that the child was thriving in his foster placement.

He was comfortable there and was observed to interact well with the caregiver. The child was described as an alert child who responded well during visits.

The court held a contested jurisdiction/disposition hearing on April 15, 2014. The court declared father the presumed father. The court found the allegations in the petition true and declared the child a dependent. It ordered reunification services for mother (and father) and ordered them to participate. The court approved the case plan, which required mother to participate in a domestic violence program, participate in general counseling, take all prescribed medication as directed by her psychiatrist, and participate in a parenting education program.

#### *Six-month Status Review*

The social worker filed a six-month status review report on October 3, 2014, recommending that the court continue mother's services for another six months. The social worker reported that, during that reporting period, mother graduated from high school. She completed a domestic violence program, and she was tending to her mental health issues and pursuing counseling. Mother started attending weekly sessions on April 17, 2014. She was also having two supervised visits with the child every week, one hour each. The visits were going well. Mother interacted with the child appropriately, changed his diapers, and played with him.

The social worker further reported that mother was not employed and did not have appropriate accommodations; thus, she was not able to care for the child safely at that time. Mother was currently 17 years old, living in a foster home. She would reach the

age of majority on November 11, 2014. Her social worker recommended that she be declared a non-minor dependent in extended foster care until the age of 21, on the condition that she pursue a secondary education with a plan of maintaining her mental health. The social worker also reported that the child was placed with a paternal aunt.

The court held a six-month status review hearing on October 15, 2014, and continued mother's services for another six months.

#### *Twelve-month Status Review*

The social worker filed a 12-month status review report on April 3, 2015, and recommended that mother's services be terminated, that a section 366.26 hearing be set, and that adoption be implemented as the permanent plan. The social worker reported that, during that review period, mother was placed in a foster family home, but upon attaining the age of majority, she opted to move out of the home. She stayed with her grandmother for a period, but later got into a physical fight with her mother and moved out. Mother was currently unemployed and living with a friend. As to her case plan, mother completed a domestic violence program, but failed to follow through with her parenting education program or individual therapy. She was taking her medication and seeing Dr. Kotomori monthly for medication management. The social worker reported that visits were suspended "for a time" because, during one visit, which was being supervised by the maternal great grandmother (MGGM), the MGGM hit mother on the face because she cursed at her. Mother was holding the child at the time. Mother pushed

the MGGM, and then mother's mother hit mother repeatedly until she fell to the ground. The child was taken to the hospital with bruises on his eyebrow.

The court held a contested 12-month status review hearing on April 22, 2015. The court found that mother's progress in her case plan had been adequate, and that there was a substantial probability that the child may be returned to her custody within the next six months. It thus continued her services for six more months. The court also ordered DPSS to file an updated case plan.

On June 26, 2015, the social worker filed an updated case plan. The case plan required mother to participate in general counseling, continue seeing her psychiatrist and take all prescribed medication as directed by him, complete a domestic violence program, complete an anger management program, and complete a parenting education program.

#### *Eighteen-month Status Review*

The social worker filed an 18-month status review report on September 9, 2015, recommending that mother's services be terminated, that a section 366.26 hearing be set, and that adoption be implemented as the permanent plan. The social worker reported that during this reporting period, mother did not have stable housing. On August 4, 2015, mother told the social worker that she was living with her godmother in San Diego in January 2015, but she returned to Riverside in February and lived in a hotel. She then lived with a friend, and finally moved back in with her parents on August 1, 2015. Mother was still unemployed. Furthermore, she was not in compliance with her case plan. Although she was referred to individual counseling, she failed to follow through.

Mother was supposed to see Dr. Kotomori every month. However, the social worker contacted his office on August 5, 2015, and they said mother visited on February 19, 2015, and had not returned since then. Dr. Kotomori had prescribed several psychotropic medications with two refills, with each refill lasting two months. Thus, her refills should have run out in April 2015. Mother was referred on May 11, 2015, for a medication evaluation with Charlee Family Care, Inc, but she failed to contact the provider. She was also referred to parenting education counseling with Catholic Charities on September 22, 2014 and on May 11, 2015; however, she failed to follow through. In addition, mother received referrals for individual counseling, but failed to follow through. On August 4, 2015, mother stated that she had not started counseling.

The social worker reported that mother had supervised visitation with the child every Saturday in the caregiver's home for six hours. The caregiver reported that the visits were fine and that there were no concerns.

The court held a contested 18-month review hearing on October 6, 2015. The court found that mother failed to make substantive progress in her case plan. The court terminated reunification services and set a section 366.26 hearing.

#### *Section 366.26 and Section 388*

The social worker filed a section 366.26 report on January 22, 2016, and recommended that the court terminate mother's parental rights and set adoption as the permanent plan. The social worker reported that mother visited with the child once a month for about four hours, and the visits went well.



The social worker reported that the child was placed with a paternal aunt and uncle (the prospective adoptive parents) on September 26, 2014, and he was thriving in their care. He was attached to them and looked to them for security and nurturing care. He responded to them as his emotional parents and care providers. The prospective adoptive parents were ensuring that the child's medical, developmental, and emotional needs were consistently being met. They were ready, willing, and able to adopt him. They felt that he was part of their family, and they were committed to raising him to adulthood.

Mother filed a section 388 petition on February 3, 2016, and requested the court to place the child with her on a plan of family maintenance, or in the alternative, give her six more months of reunification services. As to changed circumstances, mother alleged that she completed a domestic violence program, she had "been compliant with her mental health [*sic*] and [was] taking all of her medications," and was visiting regularly. She further alleged that she had completed parenting classes, was almost done with her anger management course, had stable housing, and she had a strong bond with the child. As for best interests, mother again alleged that she had a strong bond with the child and they had a loving relationship.

The social worker filed an addendum report on February 9, 2016. The social worker stated that the child had been in out-of-home placement for nearly 24 months of his 30-month life. He had been with the prospective adoptive parents since he was 13 months old, and he had known them as his parents for the last 17 months. The social

worker opined that mother did not have a parental relationship with the child. Mother was still unemployed, and she was dependent on her family to meet her needs.

The court held a combined section 388 and contested section 366.26 hearing on February 11, 2016. Mother testified at the hearing. She said she was currently seeing Dr. Kotomori, with her appointments being between two and six weeks apart. When asked how many scheduled appointments she had had since October, she said she had not been scheduling appointments with him. Rather, she had walk-in appointments. She believed she had one in October, but could not recall if she did in November. She said she had one or two appointments in December. The appointments were less than 20 minutes each. Mother further testified that she moved back in with her parents in August 2015. She said she was able to stay there on a permanent basis and that the child would have a place to stay there, as well. Mother testified she was working as an in-home caregiver for 40 hours per week. When asked how long she had been working, she said, “since last year.” She was volunteering at first, but was supposed to get her first paycheck that month. Mother said that, since her services were terminated, she had taken the time to involve herself in her anger management class. She also said she had a better bond with the child, and he called her “Mommy or mom.” She said the child usually wanted her to pick him up at the start of visits, and he would give her a hug. She said she took care of all his needs during visits, including feeding and changing him.

After hearing testimony and arguments and considering the reports submitted, the court first addressed the section 388 petition. It noted that mother had a difficult life and

noted that lately she had been making great strides in attempting to change her circumstances. However, the court found that although she was changing her circumstances, her circumstances had not yet changed. The court noted that the child had been out of her care for approximately two years, living with the same caretakers. The court did not believe it would be in the child's best interest to separate the child from the current caretakers, since they appeared to have a "good, loving, adoptive home." The court thus denied the section 388 motion. Mother's counsel then argued that the beneficial parental relationship exception to adoption applied. However, the court proceeded to find that it was likely the child would be adopted, and that there was no substantial probability of return of the child to mother's custody. The court terminated mother's parental rights and ordered adoption as the permanent plan.

## ANALYSIS

### I. The Court Properly Denied Mother's Section 388 Petition

Mother argues that the juvenile court abused its discretion in denying her section 388 petition. She contends that the court's order was not supported by the evidence. We conclude that the court properly denied mother's petition.

#### *A. The Court Did Not Abuse its Discretion*

A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new or changed circumstances exist, and (2) the proposed change would promote the best interest of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 316-317 (*Stephanie M.*)). A section 388

petition is addressed to the sound discretion of the juvenile court, and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion. (*Id.* at p. 318.)

The juvenile court here did not abuse its discretion in denying mother's section 388 petition, as she failed to show changed circumstances or that a changed order would be in the child's best interest. As to changed circumstances, she alleged that she had completed a domestic violence program, had been "compliant with mental health [*sic*]," was taking all her medications, and was visiting regularly. Mother also alleged that she had completed parenting classes, was almost done with her anger management course, had stable housing, and shared a strong bond with the child. However, at the time the court terminated mother's services, mother had already completed a domestic violence program, was visiting the child regularly, and had already moved back in with her parents. The main issues at that time were that mother had unresolved mental health needs that had not been addressed on a regular basis, that she had not been taking her medication, that she had not made progress in her mental health care, and that she had not been able to complete her case plan. Mother's case plan required her to participate in general counseling, continue seeing her psychiatrist and take all prescribed medication as directed by him, complete a domestic violence program, complete an anger management program, and complete a parenting education program. At the section 388 hearing, mother was asked about her appointments with Dr. Kotomori, specifically how many scheduled appointments she had had since October 2015. Mother could not recall if she had any appointments in October or November. She further stated that she had not been

scheduling appointments, but had walk-in appointments. She said she had one or two appointments in December for less than 20 minutes each, but she was not sure about January. She said she was not seeing anyone else for counseling. She also testified that she had attended 15 out of 16 anger management courses. Thus, mother had still not completed her anger management requirement and was apparently not participating in individual counseling. In her reply brief, she states that, at the 18-month review hearing, she told the court that she started counseling with other providers, but felt more comfortable with Dr. Kotomori. She further asserts that the court requested the social worker to provide authorization for mother to continue her therapy with Dr. Kotomori, and that “[n]o further information was contained in the record indicating Mother could not fulfill the individual counseling requirement through these visits.” However, although mother testified that she engaged in therapy with Dr. Kotomori at her visits, it is difficult to imagine so, given that she only had walk-in appointments for less than 20 minutes at a time. In any event, mother’s case plan required her to have counseling until the mental health clinician “[felt] that all treatment goals have been met.” Her petition did not allege that she had completed the individual counseling requirement or that she had completed her case plan. As the court noted, mother was “on the road to changing her circumstances, [b]ut the circumstances [had] not yet changed.”

Furthermore, mother was unable to demonstrate that a changed order was in the best interest of the child. “[A] primary consideration in determining the child’s best interests is the goal of assuring stability and continuity.” (*Stephanie M.*, *supra*, 7 Cal.4th

at p. 317.) As to the best interest of the child, mother alleged that she shared a strong bond with the child and they had a loving relationship. She then simply concluded that “[p]lacing the child with his mother is in the child’s best interest.” Mother clearly failed to show *how* it would be in the child’s best interest to reinstate her reunification services. She had already had 18 months of services, yet failed to make substantive progress in her case plan. Moreover, her circumstances failed to assure the court of any stability or continuity. She moved back in with her parents just six months prior to the hearing. However, mother testified that, the previous year, she got into a physical fight with her mother at her mother’s house. Furthermore, prior to moving back in with her parents, mother had been living in various places, including with her godmother in San Diego, a hotel in Riverside, and with a friend. In contrast to mother’s unstable housing situation, the child had been living with the prospective adoptive parents for approximately 17 months. They were meeting all of his needs, and they were ready to adopt him. In view of the circumstances, it is difficult to see how separating the child from “a good, loving, adoptive home” would be in his best interest.

We conclude that the court carefully evaluated the evidence, determined that mother had not carried her burden of proof, and properly denied her section 388 petition.

## II. The Beneficial Parental Relationship Exception Did Not Apply

Mother contends that the court erred in not applying the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i). We disagree.

At a section 366.26 hearing, the court determines a permanent plan of care for a dependent child. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Adoption is the permanent plan preferred by the Legislature. (*In re Celine R.* (2003) 31 Cal.4th 45, 53 (*Celine R.*)). If the court finds that a child may not be returned to his or her parents and is likely to be adopted, it must select adoption as the permanent plan, unless it finds a compelling reason for determining that termination of parental rights would be detrimental to the child under one of the exceptions set forth in section 366.26, subdivision (c)(1)(B). One such exception is the beneficial parental relationship exception set forth in section 366.26, subdivision (c)(1)(B)(i). (See *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206.) This exception applies when the parents “have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) The phrase “benefit from continuing the relationship” refers to a parent/child relationship that “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)). It is the parent’s burden to show that

the beneficial parental relationship exception applies. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1345.)

Mother asserts that she maintained regular and consistent visitation with the child. She further asserts that the child lived in her care for seven months, prior to his removal and that they were inseparable. In addition, she states that, throughout the dependency, her visits with the child went well. She acted as his parent, not just a visitor, in that she cared for him, changed his diapers, played games, taught him the alphabet, and read to him.

The social worker did report that mother's visits with the child went well and that she acted appropriately with him. However, to establish the beneficial parental relationship exception, "parents must do more than demonstrate 'frequent and loving contact' [citation], an emotional bond with the child, or that the parents and child find their visits pleasant." (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108.) Although the visits may have gone well, mother's interactions with the child do not demonstrate that her relationship with him promoted his well-being "to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

We further note that the evidence showed that the child and his prospective adoptive parents had a strong attachment. The child was happy and well cared for, they loved him, and they wanted to provide a permanent home for him. They were committed to raising him to adulthood.



Ultimately, mother has not proffered any evidence to support a finding that the child had a “substantial, positive emotional attachment such that [he] would be greatly harmed” if the relationship was severed. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) We conclude that the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i), did not apply here.

Mother additionally contends that the court should have selected guardianship as the permanent plan, rather than adoption, because she proved the beneficial parental relationship exception applied. However, as discussed above, the exception did not apply. We further note that “[t]he goal of permanency planning is to end the uncertainty of foster care and allow the dependent child to form a long-lasting emotional attachment to a permanent caretaker.” (*In re Priscilla D.* (2015) 234 Cal.App.4th 1207, 1216.) “Continuity in a legal guardianship is not equivalent to the security and stability of a permanent caretaker.” (*Id.* at pp. 1215-1216.) Thus, the court here properly chose the preferred permanent plan of adoption. (*Celine R.*, *supra*, 31 Cal.4th at p. 53.)

#### DISPOSITION

The court’s orders are affirmed.

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HOLLENHORST  
Acting P. J.

We concur:

CODRINGTON  
J.

SLOUGH  
J.